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[APPELLATE CRIMINAL JURISDICTION]

LAVILLE, Ag. J.

June 16, 1937

LEW WEE CHIN v. PUBLIC PROSECUTOR OF JOHORE

[JOHORE BAHRU MAGISTRATE'S CRIMINAL APPEAL No. 10 of 1937]

Trade & Customs Enactment, Section 13 (c) —dutiable goods—importation by road—customs declaration—false account—onus of proof.

The appellant purchased and brought two lots of sarongs from Singapore into the State and in respect of these had two sets of invoices made out, one set giving the correct value and the other a higher value. He furnished a customs declaration which gave the lowest value. The excise authorities accepted as the proper value of the set which gave the higher price but considered the lower value given by the appellant to be false. The appellant was charged under Section 13(c) of Enactment No. 80 (Trade & Customs). The lower price applied to 115 pieces of sarongs the value of 55 pieces of which was proved to be genuine. As to the balance of 60 pieces the Magistrate held that the appellant had not discharged the onus of showing that the smaller priced invoices represented the genuine sale and, therefore, convicted the appellant, imposed a fine of $25/- on him and made an order for the confiscation of the 60 pieces of sarongs. On appeal to the Judge,

Held, that the onus of proving the falsity of the customs declaration lay upon the prosecution and as the prosecution had failed to discharge that onus, the appellant was entitled to be acquitted.

MAGISTRATE'S CRIMINAL APPEAL.

Cunningham-Brown for the Appellant.

Moor, Public Prosecutor, in person.

Cur. Ad. Vult.

LAVILLE, AG. J.—In this case the charge against accused is rendering a false account of the value of 115 imported sarongs to the customs officer at Johore Bahru on importation thereof.

The evidence for the prosecution is that accused had 2 sets of invoices to cover these goods and made his customs declaration on the set which gave the lowest value.

The customs authorities accepted as the proper value the set which gave the higher price, and argued that the object of the accused in providing himself with 2 sets of invoices was to enable him to pay a lower duty.

The accused's explanation was that the set containing the lower prices was the genuine one and that he with the connivance of the sellers had provided himself with the set containing the higher prices so that he could get a bigger price for the sarongs when he retailed them. The issue therefore is whether the value of the sarongs for duty purposes as given by accused was false or true.

In regard to 55 pieces of the 115 the learned Magistrate has held that the story of the defendant is proved true on the evidence given by him and the seller. As to the balance of 60 the learned Magistrate has held that the onus of proving that the smaller priced invoices represented the genuine sale is on the defendant, and that he has failed to discharge that onus, and that therefore the contention of the prosecution is true.

This is an incorrect view of the matter. Sec. 45 of the Enactment lays down in what circumstances the onus of proof is on the defendant: they are when a dispute arises (i) as to whether duty has been paid (ii) whether they have been lawfully landed or imported (iii) concerning the place whence such goods were brought.

As to (i) in my view this presupposes that the correct duty is known and fixed and the point of dispute is whether it has been paid or not: as to (ii) and (iii) the dispute would concern the port at which goods were landed or the custom station at which they were imported or the question of the origin of the goods. In this case no dispute on these points arises: the sole dispute is whether the value given by the accused is true or false to his knowledge and the onus lies on the prosecution to prove that it is false. The sum total of the evidence for the prosecution is that the circumstances are suspicious but they must go further and prove that the value given by the accused in his customs declaration is false. This they have failed to do, tho' there appears to be ample means by which it could have been proved if it was false. All that was required was an inquiry from the shops at which accused bought in Change Alley.

The learned P.P. points out that under rule 9 made under sec. 4 of the Enactment the value of imported goods for *ad valorem* duty purposes shall be taken to be the price as ascertained by the Commissioner that the goods would fetch on sale in open market. There is no evidence that the Commissioner has ascertained the price of these goods or of similar goods.

For these reasons in my view the Magistrate should not have called on accused for his defence but have dismissed the case at the end of the prosecution.

I set aside the conviction and sentence of the Magistrate and order the refund of the fine paid and the return of the 60 batiks to accused on payment of the correct duty.

Appeal allowed.
Conviction quashed.